

Exhibit  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CHAABAN, et al.,  
Plaintiffs,  
vs.  
CRISCITO,  
Defendant.

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.  
. Case No. 2:08-cv-01567  
.  
. Newark, New Jersey  
. June 21, 2010  
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.  
.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MADELINE ARLEO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;  
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1 (Commencement of proceedings at 12:22 p.m.)

2

3 THE COURT: -- Criscito. Could I have appearances,  
4 please?

5 MR. CHARME: Stephen Charme, Witman Stadtmauer for  
6 the plaintiff trustees.

7 THE COURT: Okay.

8 MR. AGNELLO: John Agnello also for plaintiffs'  
9 trustees.

10 THE COURT: Okay.

11 MR. KERN: Steven Kern, Kern Augustine Conroy &  
12 Schoppmann on behalf of Dr. Criscito.

13 THE COURT: Okay. Have a seat, everyone. Let me  
14 just put a -- this motion in a little bit of factual context.

15 This is a motion of Dr. Criscito seeking leave to  
16 file a third-party complaint pursuant to Fed. R. Civ. P.  
17 14(a). Plaintiffs Dr. Fadi Chaaban, Dr. Sabino Torre,  
18 Dr. Constantinos Costeas, and Dr. Anthony Casella are  
19 trustees of Diagnostic & Clinical Cardiology, a profit  
20 sharing plan, which is the subject this action.

21 The complaint as -- alleges as follows: Criscito  
22 intentionally concealed his breach of fiduciary duties to the  
23 plan, its beneficiaries and participants. Specifically  
24 Criscito, the former trustee, secretly diverted the plan's  
25 assets to his own benefit. Criscito accomplished this

1 unlawful conduct through a series of schemes spanning decades  
2 until 2007 when he was the sole trustee. Plaintiffs did not  
3 discover Criscito's fraudulent scheme until they replaced him  
4 as trustee in 2007. Based on this alleged wrongdoing,  
5 plaintiffs filed this action in March of 2008. They claim  
6 that Criscito violated his fiduciaries duties to the plan as  
7 set forth in the Employee Retirement Income Security Act,  
8 otherwise known as ERISA. And I should note for the record,  
9 that there is no claim of negligence; it's an intentional  
10 tort and a fraud claim brought under ERISA.

11           And to proceed to the instant motion, on June 16th,  
12 2009, plaintiffs' counsel deposed Brian Warnock, who was a  
13 vice president of the American Pension Corporation, an  
14 independent third-party administrator, who was retained to  
15 administer the functions of the plan. According to Criscito,  
16 during Warnock's deposition, he admitted that APC possessed  
17 brokerage account statements from early 2000, which had they  
18 been reviewed, would have no later than October of 2001  
19 revealed the discrepancies in the valuation of the plan's  
20 assets, which would have prevented Criscito's alleged  
21 fraudulent scheme, or, I guess, would have at least brought  
22 it to light. And that is at admission on April 26, 2010,  
23 Criscito filed this motion to implead APC, Mr. Warnock, and  
24 Sandra Eck [phonetic], a pension consultant of APC, as  
25 third-party defendants. Criscito seeks to assert common law

1 claims for indemnification and contribution against the  
2 third-party defendants based on their negligence. Criscito  
3 alleges that Warnock and/or Eck had a duty to correct any  
4 inaccuracies and/or omissions concerning the valuation of the  
5 plan assets, based on the brokerage account statements in  
6 their possession; yet they failed to discover any alleged  
7 discrepancies between the true valuation of the alleged  
8 value- -- and the alleged valuation that Criscito had  
9 provided. As such, according to Criscito, the proposed  
10 third-party defendants negligently performed their duties  
11 "with respect to the administration of the plan."

12 Thus, he claims that in the event that he is liable  
13 to the plaintiffs based on his actions while trustee of the  
14 plan, the third-party defendants are bound to indemnify  
15 Criscito and contribute to any judgment against him based on  
16 any lawsuits, costs, and as a result of third-party  
17 defendants' negligence. In support of this motion, Criscito  
18 submits that the motion is timely and that his third-party  
19 complaint will not cause any undue prejudice.

20 Plaintiff opposes -- plaintiffs oppose the motion  
21 on several grounds that -- that the indemnification and  
22 contribution claims are preempted by ERISA and thus barred;  
23 that Criscito cannot state a claim for contribution or  
24 indemnification, his claims are barred by the applicable  
25 statute of limitations governing medical- -- malpractice

1 claims. There is no basis under ERISA to sue  
2 non-fiduciaries, including the third-party defendants, and  
3 admit that if APC was a fiduciary, Criscito could not assert  
4 indemnification and contribution claims against a third-party  
5 administrator Warnock or Eck.

6 Rule 14(a) says that a party must serve a  
7 third-party -- summons within 14 days after filing its answer  
8 or must seek leave from court to do so, and that's why this  
9 instant motion is before us.

10 I'd like to begin by asking Mr. Kern a question. I  
11 know there's a lot of issues here today. But it's -- it's  
12 really a basic one that goes to futility, and that is whether  
13 the proposed amended -- pleading states a claim for  
14 indemnification and contribution. And your brief did not  
15 indicate nor has my research disclosed any cases where a  
16 claim for either contribution or indemnification can arise  
17 where -- in favor of any tort-feasor who was -- who was  
18 alleged to have intentionally caused the harm. All the cases  
19 talk about joint tort-feasors under negligence theories.  
20 There's no cases out there where there is solely claims of  
21 intentional fraud and then indemnification and contribution  
22 claims based on negligence. They don't exist.

23 And there's some -- there's some very strong  
24 language in the Restatement of Torts that says that is not  
25 permitted. Because as I understand your claim, it's --

1 plaintiffs' claim is that Dr. Criscito committed a fraud on  
2 us and stole our money, and your contribution and  
3 indemnification claim is, well, the third-party  
4 administrators should have discovered my fraud, and therefore  
5 they're liable to the plaintiffs too.

6 Is there any other way really to describe your  
7 third-party complaint?

8 MR. KERN: If, indeed -- and I think you're  
9 correct, plaintiffs' claim is limited to one of fraud.

10 THE COURT: It is.

11 MR. KERN: You're right. I think you raise an  
12 interesting point and frankly one where that I'm not sure  
13 that we've given much consideration to. But --

14 THE COURT: Because -- because think about the  
15 whole notion of contribution indemnification as principles.  
16 Contribution -- indemnification says, I didn't do it, the  
17 other person's primarily liable. And on the face of the  
18 pleadings, that just cannot be, because the theory is you did  
19 it intentionally, you went and you stole our money, so  
20 there's no way on that intentional theory, you could --  
21 Criscito could say to the folks that didn't catch his  
22 wrongdoing, you're primarily label. So I'm not sure how you  
23 can even state a claim for indemnity.

24 But when we get to contribution, which is we're all  
25 liable, we're all tort-feasors, the case when there's a

1 four-party collision and everyone did something wrong on the  
2 highway and we bring in all the tort-feasors and -- on a  
3 negligence theory.

4 I haven't seen any cases, and I've looked very,  
5 very carefully for contribution theories where the -- in  
6 favor of the tort-feasor who -- who the only theory against  
7 him is intentional harm. In fact, that's the third -- the  
8 second -- the restatement section of torts, says there's no  
9 right of contribution in favor of any tort-feasor who has  
10 intentionally caused the harm. That's been adopted by the  
11 New Jersey courts. And I didn't see any law that's ever  
12 recognized a contribution theory in this intentional  
13 tort-feasor versus negligence context.

14 MR. KERN: It is an interesting question,  
15 obviously. It's not one that was raised by the plaintiffs.  
16 And frankly, I -- I can't tell that I've considered it at any  
17 length.

18 But from what you're saying, Your Honor, I can't  
19 tell you that you're wrong. And indeed, I -- it sounds like  
20 you're most probably right, but honestly, it's not something  
21 I've addressed.

22 THE COURT: Let me ask you a question about  
23 standing. I know that the plaintiffs have talked about  
24 standing under ERISA based on fiduciary status. But there's  
25 some more basic standing concepts out there that talk about



1 that a plaintiff must have personally suffered some actual or  
2 threatened injury as a result of defendant's alleged conduct.

3 So how does he have stand- -- when the theory is  
4 you defrauded us, and his -- here's your theory against the  
5 other tort-feasor or the proposed tort-feasor is you should  
6 have let -- you should have -- you should have picked up my  
7 wrongdoing earlier, how come he said that he has personally  
8 suffered some injury as a result of their conduct?

9 MR. KERN: I think, again, if we're limiting  
10 this -- and you're right -- to a fraud base, then there is  
11 none.

12 THE COURT: Okay.

13 MR. KERN: I think you're --

14 THE COURT: Anything else you want to add?

15 MR. KERN: No, I -- you've stumped me, Your Honor.  
16 I think you're --

17 THE COURT: Okay.

18 Mr. Agnello, anything you want to add?

19 MR. AGNELLO: Mr. Charme is going to argue the  
20 motion, Judge, but no, I don't think we have anything to add.

21 MR. CHARME: I really have nothing to add to what  
22 Your Honor has said.

23 THE COURT: Okay. I'm -- I think you see where I'm  
24 headed. And I just want the record to be clear. There's a  
25 lot of issues were raised by the -- both parties. And I

1 think there's four fundamental points that make this motion  
2 both untimely, prejudicial, and futile under the proposed  
3 pleading, and for that reason I'm denying the motion to -- to  
4 amend -- for leave, rather, to file a third-party complaint.  
5 And I want to go through my reasons.

6           The first issue is whether the third-party claims  
7 are dependent on the outcome of the main claim.  
8 Rule 14(a) -- third-party complaints under 14(a) can only be  
9 asserted when the third party's liability is in some way  
10 dependent on the outcome of the main claim or when the third  
11 party is secondarily liable to the defendant. If the claim  
12 is separate or independent, the pleading will be denied. The  
13 crucial characteristic of a Rule 14 third-party claim is that  
14 the original defendant is attempting to transfer to the  
15 third-party defendant all or part of the liability asserted  
16 against the original plaintiff. And that's from In re One  
17 Meridian Plaza Fire Litigation, 820 F. Supp. 1492 (E.D. Pa.  
18 1993).

19           Here, the essence of this case is Criscito's  
20 alleged concealed breach of his fiduciary duties owed to the  
21 plan. His indemnification and contribution claim against  
22 APC, Warnock, and Eck are separate and independent from the  
23 main fraud under ERISA. Specifically, the liability of APC,  
24 Warnock, and/or Eck as third-party defendants is not  
25 derivative of Criscito's liability concerning his diversion

1 of the plan assets for his own benefit. Criscito  
2 theoretically could file a separate professional and  
3 malpractice action against them if a judgment is rendered  
4 against him in this case. Thus, Criscito cannot maintain a  
5 third-party action for contribution and indemnification  
6 against APC, Warnock, and Eck.

7           Although -- second, I want to talk about standing.  
8 Although it was not raised precisely in this way by the  
9 parties, the Court finds that Criscito lacks standing to file  
10 a third-party complaint on his indemnification and  
11 contribution claims. To have standing, a plaintiff must have  
12 personally suffered some actual or threatened injury as a  
13 result of defendant's unlawful conduct. That's the Gariano  
14 [phonetic] case at 845 F. Supp. 1074 (D.N.J. 1994). A  
15 plaintiff must be asserting his own legal rights in the case,  
16 not those of third parties.

17           Finally, a plaintiff's injuries must be within his  
18 own -- as protected by the law from which the claim arises.

19           Here, plaintiffs have sued Criscito for his alleged  
20 concealment of breach of fiduciaries owed to the plan. As  
21 successive fiduciaries under ERISA, plaintiff -- plaintiffs  
22 seek on behalf of the plan and its participants and  
23 beneficiaries, to recover assets that belong to the plan, its  
24 participants and beneficiaries, and also seek relief  
25 related -- related relief, such as punitive damages.

1           In his proposed third-party complaint, Criscito  
2 claims that in the event he is liable for this wrong -- this  
3 intentional wrongdoing, based on his neg- -- based on his  
4 actions with respect to the plan, the third-party defendants  
5 are bound to indemnify him for any judgment rendered against  
6 him based upon any losses caused to him as a result of  
7 third-party defendants' negligence.

8           The Court finds that Criscito failed to establish  
9 that his losses, if any, were the result of the alleged  
10 negligence or APC, Warnock or Eck. Although plaintiffs may  
11 have a viable claim against him for their alleged breach of  
12 duties as third-party administrator, any relief that  
13 plaintiff may seek against the third-party administrator  
14 would not appear to reflect plaintiffs' actions against  
15 Criscito based on his alleged fraudulent scheme to divert the  
16 plan's assets.

17           Additionally, Criscito could not demonstrate that  
18 his interests are within -- in his of interests protected by  
19 the law from the -- from which his claims arise, the  
20 accused -- he was accused of undertaking a fraudulent scheme,  
21 while serving as the plan's trustee for his own financial  
22 gain. Such interest cannot be said to be protected by the  
23 law.

24           I'm going to talk for a little bit about undue  
25 delay and timeliness. And I say that mindful that this is a

1 case that was filed in '08, over two years ago. Purpose of  
2 Rule 14(a) is to avoid security of action and multiplicity of  
3 litigation. That principle is well settled. However,  
4 joinder of third-party defendants under Rule 14 is not  
5 automatic. The decision to permit joinder rests with the  
6 sound discretion of the court. Courts have considered the  
7 following factors in exercising their discretion on whether  
8 to permit the filing of a third-party complaint: Timeliness,  
9 probability of trial delay, potential for complication of  
10 issues at trial, and prejudice to the original plaintiffs.

11 A motion brought under 14(a) is not alleged under  
12 the same standards as a motion seeking leave to amend the  
13 pleadings under 15(a). And that requires a court to look at  
14 undue delay, bad faith and dilatory motive, repeated failure  
15 to cure deficiencies in the pleadings, and undue prejudice to  
16 the opposing party by virtue of the allowance of the  
17 amendment.

18 With respect to delay, the Third Circuit has said  
19 that the package of time without more does not require that a  
20 motion to amend be denied. However, at some point, the delay  
21 would become undue, placing an unwarranted burden on the  
22 Court, or it will become prejudicial, placing an unfair  
23 burden on the opposing party. The question of undue delay  
24 requires a focus on the plaintiffs' motives for not amending  
25 the complaint to assert the claim earlier.

1           Additionally, whether the pleading would be futile,  
2 such as when the proposed claim provides an illegal basis for  
3 relief, a judge may properly deny a 14(a) motion.

4           Here, the Court is satisfied that there was undue  
5 delay in bringing this motion here. Just -- based on the  
6 allegations in the complaint, in the third-party complaint,  
7 Criscito knew the crucial facts back in 2000. He knew who  
8 the third-party administrator was. He knew what their role  
9 was. So for him to say that I didn't learn it until -- that  
10 fact of the third-party administrator's role until the  
11 deposition this year, completely ignores the history of the  
12 course of dealings between the parties as plan fiduciaries  
13 and as third-party administrators.

14           Therefore, as early as 2000, Criscito had to have  
15 been aware their potential obliviousness to the valuation  
16 inaccuracies but waited 10 years, two years into this case  
17 after discovery's been ongoing, depositions have been taken,  
18 to bring this -- to bring this third-party complaint.  
19 Criscito cannot and has not sufficiently explained his delay  
20 and failure to take advantage of previous opportunities to  
21 implead these third-party defendants, and therefore, the  
22 Court finds there's been undue delay.

23           Finally, I want to talk about futility, and I want  
24 us to begin with what we talked about earlier during oral  
25 argument, which is indemnification. Indemnification is an

1 equitable doctrine that allows the court to shift the costs  
2 from tort-feasor to another. That's well settled in the  
3 Johns-Manville case, 116 N.J. 504 (N.J. 1989). One branch of  
4 common law indemnity shifts the liability from one who is  
5 constructively or vicariously liable to the tort-feasor who  
6 is primarily liable. A corollary to this principle is that  
7 one who is primarily at fault may not obtain indem --  
8 indemnity from another tort-feasor.

9           Accepting Criscito's allegations as true, he is  
10 primarily liable to plaintiffs based on intentional  
11 wrongdoing, and thus, may not seek indemnity from APC,  
12 Warnock, and Eck for indemnity, and therefore the indemnity  
13 claims fail as a matter of law.

14           I reach a similar conclusion with respect to  
15 contribution, and I rely on the Second Restatement of Torts,  
16 § 886(a)(1), which talks about contribution, and it says,  
17 first that when two or more persons become liable in tort to  
18 the same person for the same harm, there's a right of  
19 contribution among them, even though judgment has not been  
20 rendered against or all of them, but that there is "no right  
21 of contribution in favor any tort-feasor who has  
22 intentionally caused the harm."

23           Here, plaintiffs' ERISA action is based on  
24 Criscito's fraud, while Criscito's third-party claims are  
25 based upon negligence.

1           As Criscito is alleged to have intentionally caused  
2 harm to plaintiffs, he cannot maintain a cause of action for  
3 common-law contribution against APC, Warnock, or Eck. To  
4 hold otherwise, would be aiding Criscito, who has been  
5 alleged to have deliberately done harm to plaintiffs. This  
6 is not a situation where Criscito is alleged to have acted  
7 negligently and he is an equal tort-feasor with the  
8 third-party defendants. As such, he fails to state a claim  
9 for common-law contribution.

10           So for those reasons, the Court finds that Criscito  
11 cannot maintain a third-party complaint for indemnification  
12 or contribution, and his motion for leave to file third-party  
13 complaint is denied. And I will sign an order to that effect  
14 today. I believe one had been submitted.

15           Okay. Why don't we talk a little bit about  
16 discovery and where we are with respect to discovery in this  
17 case.

18           MR. CHARME: Discovery is done, Your Honor, because  
19 as a matter of fact, what I would like to do is have the  
20 Court set a pretrial conference date and then start getting  
21 the pretrial order done, if it would be acceptable to  
22 Your Honor.

23           THE COURT: Let me stop and ask you two questions,  
24 Mr. Charme. One is: Will there be any summary judgment  
25 motions?



1 MR. CHARME: That leads to a different point I was  
2 going to make. I received an ex- -- a four-page expert  
3 report from Mr. Kern via email on Friday. The report is  
4 missing some of the prerequisites of Rule 26, such as --

5 THE COURT: Let me stop you further. Are you --  
6 have you submitted any expert reports?

7 MR. CHARME: Yes, I did.

8 THE COURT: Okay.

9 MR. CHARME: That was done on April 15th.

10 THE COURT: Okay. And when was his -- when were  
11 his due?

12 MR. CHARME: His was due Friday.

13 THE COURT: And he sent you a report.

14 MR. CHARME: He sent me a report. But it's  
15 incomplete in terms of complying with Rule 26.

16 THE COURT: Okay. Have you had a meet-and-confer  
17 with him to see if he can give you the editions?

18 MR. CHARME: Well, I sent the let- -- I sent him a  
19 letter this morning.

20 THE COURT: Okay.

21 MR. CHARME: I don't anticipate there is going to  
22 be an issue on that. The only thing is, Your Honor, you  
23 provided that each side had 20 days from receipt of a report  
24 to --

25 THE COURT: You can have more time to take the

1 depositions, if you need them.

2 MR. CHARME: Okay.

3 THE COURT: Not a problem.

4 Are you going to be filing any summary judgment  
5 motions?

6 MR. CHARME: I'm not sure.

7 THE COURT: Well, I need to know because, if not,  
8 I'll give you -- it's a case that's assigned to Judge Brown  
9 in Trenton. He will promptly give you a trial date, if  
10 there's no motions pending. If there are motions pending,  
11 he'll hear the motions first. So you're at the end of  
12 discovery. You have everything in. Have you made a -- it  
13 doesn't -- it sounds like it would be tough to prevail on  
14 summary judgment on a fraud case.

15 MR. CHARME: Yes, that's -- that's correct,  
16 Your Honor. So I don't believe we'll be making a motion.

17 THE COURT: Okay. And what about any further  
18 settlement discussions? Are they realistic? Do you want to  
19 come in for another conference? Do you want to -- I can give  
20 a date for a final pretrial conference, not a problem.

21 MR. CHARME: Your Honor, if I might just tell you  
22 where we are.

23 THE COURT: Okay. Good. Do you want to go off the  
24 record, since we're talking about settlement?

25 MR. CHARME: Yeah, go off the record.

1 THE COURT: Okay.

2 (Pause in proceedings)

3 THE COURT: -- five days before the pretrial  
4 conference. Tell me when you want to get ready for the  
5 pretrial. Do you want to do it in August? Do you want to do  
6 it in September? You tell me.

7 MR. CHARME: As I understand the --

8 THE COURT: I'll give it to you next week if you --  
9 I mean, I'll do it as quickly as you want it.

10 MR. CHARME: Well, Your Honor, I have the last  
11 pretrial order that you signed, and it says that 10 days  
12 before the pretrial conference, you want the final pretrial  
13 order and all of the other stuff.

14 THE COURT: Right. But I'll do it -- you know what  
15 I'd like to do is I can assure you that I can give you a  
16 prompt trial with Judge Brown. So I want to have that  
17 pretrial order in before 10 days. I'm not sure what the  
18 trial date's going to be. But you tell me how quickly you  
19 can -- you can work together to get a final pretrial order  
20 done. If you want July, August, September, I'm flexible.

21 MR. CHARME: Okay. We'd like -- how about if we  
22 submit the pretrial order by September 30?

23 THE COURT: Could we do a little bit earlier in  
24 September because, you know, he may be ask- -- why don't we  
25 try to do it like mid-September?

1 MR. CHARME: That's fine.

2 THE COURT: Is that okay? Okay. That gives you  
3 the summer to take the two depositions, if you want to take  
4 them, and to get the -- is anyone observant of the Jewish  
5 holidays?

6 MR. CHARME: Yes.

7 THE COURT: Okay. So let me see where they are.  
8 Do you have your calendar? Do you know when they are? Jess,  
9 can you help me out? Okay. It's early in September. Okay.  
10 Yom Kippur's on a weekend. I have a trial the week of  
11 September 20th. So I can do it -- is it too soon to do it  
12 the week of the 13th?

13 MR. KERN: Your Honor, I am on trial most of  
14 September and October.

15 THE COURT: You have to find a day to come in  
16 because Judge Brown will have you come in on a Saturday.

17 MR. KERN: Okay.

18 THE COURT: Or a Friday night or something. So you  
19 tell me, you -- I'll work with you, but you can't just say  
20 I'm out of the box in September and October. I can move it  
21 till August, but that'll probably be more burdensome. I'm  
22 trying to work with you.

23 MR. KERN: You want dates now? If you give me two  
24 minutes, I --

25 THE COURT: Sure.

1 MR. KERN: I'm -- at trial on September 23, -4, -8  
2 and 30, and then October 1, 7, 8, 14, 15, 21, and 22.

3 THE COURT: Why don't we do Friday, September 17th?  
4 The 17th is the holiday, so we'll do it in the morning at  
5 10 o'clock? What holiday is that? That's the eve of Yom  
6 Kippur. It doesn't start till that evening. Is that going  
7 to be a problem?

8 MR. CHARME: No.

9 THE COURT: Okay. Good. So we'll do it early and  
10 get you out of here early. So why don't we say  
11 September 17th at 10 a.m. and get me the pretrial the day  
12 before, okay? And come with your calendar so we can talk  
13 about a trial with Judge Brown. I'll see when he's  
14 available.

15 How long do you think the trial will be?

16 MR. CHARME: Maybe a week.

17 THE COURT: Okay. I will send a form -- a final  
18 pretrial order order, and I will give you a copy of Judge --  
19 the sample for Judge Brown's, okay?

20 MR. KERN: Judge, before we do that, I think there  
21 may be a summary judgment motion --

22 THE COURT: You can file it at any time. Judge  
23 Brown has no rules, but I'm not going to adjourn the final  
24 pretrial.

25 MR. KERN: Okay.

1 THE COURT: Okay. So September 17th at 10 -- the  
2 defendant's going to move for summary judgment?

3 MR. KERN: Yup.

4 THE COURT: Okay. All right. September 17th at  
5 10 o'clock. Good luck, everyone. I will see you then.

6 MR. CHARME: Thank you, Judge.

7 MR. AGNELLO: Thank you, Judge.

8 (Conclusion of proceedings at 12:50 p.m.)  
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## Certification

22

## Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 22 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

July 6, 2010

Signature of Approved Transcriber

Date

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